

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Otter
Tail Power Company and Others for
Certification of Transmission Facilities in
Western Minnesota

SIXTH PREHEARING ORDER

A telephone motion hearing on Joint Intervenor's Motion to Strike the November 6, 2008, Prefiled Testimony of Eric Laverty, Midwest ISO, was held November 7, 2008. During the motion hearing, Joint Intervenor's further moved to strike a portion of the November 6, 2008, Supplemental Prefiled Rebuttal Testimony of Ward Uggerud, Otter Tail Power Company.

Todd J. Guerrero and David L. Sasseville, Lindquist & Vennum, 4200 IDS Center, 80 South Eighth St, Minneapolis, MN 55402, and Mark Brink, Otter Tail Corporation, appeared for the Applicants.

Marya M. White, Dr. Steve Rakow, and Hwikwon Ham, appeared for the Department of Commerce, Office of Energy Security.

Elizabeth I. Goodpaster, Attorney at Law, Minnesota Center for Environmental Advocacy, 26 East Exchange St, Suite 206, St. Paul, MN 55101, appeared for the Joint Intervenor's.

Christopher Greenman, Counsel, Excelsior Energy, Inc., 11100 Wayzata Blvd, Suite 305, Minnetonka, MN 55305, appeared for the Excelsior Energy, Inc.

Christopher K. Sandberg, Lockridge Grindal Nauen PLLP, 100 Washington Ave S, Suite 2200, Minneapolis, MN 55401, for the Midwest Independent System Operator.

Jeanne Cochran, Assistant Attorney General, 1100 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101, appeared for the Minnesota Public Utilities Commission (Commission or PUC). Robert Cupit and David Jacobson, Minnesota Public Utilities Commission, 121 Seventh Place E., Suite 350, St. Paul, MN 55101 appeared for the Commission Staff.

Craig R. Roach and Frank Mossburg appeared for Boston Pacific.

Later on November 7, 2007, additional comments were submitted by Applicants, Joint Intervenor's, and the OES on the motion to strike a portion of Mr. Uggerud's

testimony. Applicants and Joint Intervenors submitted further comments on Sunday, November 9, 2008.

Based the record and for the reasons discussed in the following Memorandum, the Administrative Judge makes the following:

ORDER

1. Joint Intervenors' Motion to Strike the November 6, 2008, Prefiled Testimony of Eric Lavery, Midwest ISO, in its entirety is **GRANTED**.

2. Joint Intervenors' Motion to Strike page 12, line 20, through page 13, line 14, and Exhibits 141-A and 141-B, of the November 6, 2008, Prefiled Testimony of Ward Uggerud is **GRANTED**.

3. The stricken testimony shall be considered as an offer of proof.

Dated: November 10, 2008

s/Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

In its *Order Referring Case to Office of Administrative Hearings for Additional Evidentiary Proceedings*, the Commission stated that it had decided defer action on the case for purposes of obtaining additional expert opinion on "at least" three issues that required further development to ensure informed decision-making: carbon regulation costs, construction costs, and fuel costs, each of which it further described by listing several sub issues. It ordered that an expert be retained to analyze these issues and provide a written report to the Commission detailing his or her conclusions. It ordered that the case be returned to the Office of Administrative Hearings for further evidentiary proceedings that would:

. . . include the testimony of the Commission's expert, including the expert's report, rebuttal testimony as necessary, cross-examination as appropriate, and a supplemental report from the Administrative Law Judge.

The Order also stated:

The Commission will also ask the Administrative Law Judge to conduct these supplementary proceedings as expeditiously as possible, consistent with the need for informed decision-making and the due process rights of all parties. The Commission will set a target date for the Administrative

Law Judge's Report of 120 days from the date the expert is retained. The Commission will then conduct post-evidentiary proceedings, including oral argument, as expeditiously as possible.

The Commission's Order did not open the case to a new round of evidence from the parties on all the issues in this case. The Order expressly limited the additional evidentiary proceedings to the three cost issues it identified, as presented in the Commission's expert's report, rebuttal to that report, and cross-examination of the Commission's expert. It appears that the term, "at least three issues" was intended to allow the Commission's expert to address additional sub issues within the three primary issues, and was not intended to allow unrelated issues to be brought in. To have done so would have been inconsistent with the Commission's stated desire for a limited, expedited proceeding.

The Midwest ISO's proffered testimony is not directly relevant to the issues identified by the Commission's Order, nor can it be considered rebuttal to the report of the Commission's expert. The testimony is certainly relevant to other issues in this case dealing with MISO's queue process and the impact that a denial of the requested Certificate of Need would have upon MISO and its planning. But those are not the issues that the Commission wants to address in this subsequent proceeding. Mr. Laverty's testimony must be stricken. It will be available to the Commission as an offer of proof should the Commission desire to consider it.

The Joint Intervenors also claim that page 12, line 20, through page 13, line 14, and Exhibits 141-A and 141-B, of the November 6, 2008, Prefiled Testimony of Ward Uggerud is also not within the scope of this subsequent proceeding. In this testimony, Mr. Uggerud refers to an issue that had arisen regarding resource planning modeling that had been done for CMMPA. OES witness Dr. Rakow had raised concerns that the modeling had improperly limited the number of resource combinations ("states"), thereby making the results possibly unreliable. A Joint Intervenor witness agreed. After the previous hearings and Administrative Law Judges' Report, a different witness ran the model for Applicants and believed he showed that the results were reliable. The CMMPA Director then engaged in discussions with OES attempting to convince them of that. Dr. Rakow replied that he had agreed with the method used by the new witness, but nothing further. In general, OES questions whether this matter is within the scope of this subsequent proceeding.

Applicants argue that this testimony should be allowed in order to provide the Commission with the most accurate record possible.

The Administrative Law Judge concludes that this portion of Mr. Ward's testimony is also outside the scope of the Commission's Order and the scope of the Commission's expert's report. It must also be stricken.

S.M.M.